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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/326,526 06/04/99 GARNER, PH.D.

H 119929-1015

EXAMINER

MMC1/0102

DANIEL F PEREZ
GARDERE & WAYNE LLP
1601 ELM STREET
SUITE 710
DALLAS TX 75201-4761

PHAN, J

ART UNIT

PAPER NUMBER


2872

DATE MAILED:

01/02/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary	Application No. 09/326,526	Applicant(s) Garner	
	Examiner James Phan	Group Art Unit 2872	

☒ Responsive to communication(s) filed on Oct 13, 2000

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire three month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) 1, 2, 4-8, 13-16, and 18-27 is/are pending in the application.

Of the above, claim(s) 22-25 is/are withdrawn from consideration.

☒ Claim(s) 15, 16, 18-21, 26, and 27 is/are allowed.

☒ Claim(s) 1, 2, and 4-6 is/are rejected.

☒ Claim(s) 7, 8, 13, and 14 is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been
☐ received.
☐ received in Application No. (Series Code/Serial Number) _____
☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☐ Notice of References Cited, PTO-892

☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 2 and 3

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

Art Unit: 2872

Election/Restriction

1. Applicant's election of Group I in Paper No. 7 (amendment and election filed 10/13/00) is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

2. Applicant's election with traverse of the species (1) and (a) in Paper No. 5 (amendment and election filed 6/23/00) is acknowledged. The traversal is on the ground(s) that (1) the examiner fails to provide a reason as to why the species are distinct and that (2) the examiner fails to provide reasons for insisting upon restriction therebetween. This is not found persuasive because (1) applicant is directed to MPEP Section 806.04(f) for the reason as to why the species are distinct. And (2) a separate search is required for each of the patentably distinct species; and thus, a serious burden on the examiner has been shown.

The requirement is still deemed proper and is therefore made **FINAL**.

3. Claims 22-25 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

Art Unit: 2872

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371© of this title before the invention thereof by the applicant for patent.

5. Claims 1-2 and 4-6 are rejected under 35 U.S.C. 102(e) as being anticipated by WO 99/42813 (note that this publication has a US Priority Data, 60/075,641, filed on 2/23/ 1998). See Fig. 1 and the teaching on page 6, lines 26-29.

Allowable Subject Matter

6. Claims 7-8 and 13-14 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
7. Claims 15-16, 18-21 and 26-27 are allowed.
8. The following is a statement of reasons for the indication of allowable subject matter: none of the cited references teaches or fairly suggests the claimed invention having the structure specified in claims 7-8, 13-16, 18-21 and 26-27.
9. Any inquiry concerning this communication should be directed to James Phan whose telephone number is (703) 308-48. The fax phone number for this Group is (703) 308-7722.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0956.

Phan, J.

December 18, 2000


James Phan
Primary Examiner